

MF 01-4

Tax Type: Motor Fuel Use Tax

Issue: Failure To Have Motor Fuel Use Tax Decal/Permit

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**JOHN DOE  
ABC**

**Taxpayer**

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**Docket No. 00-ST-0000**

**Acct # 00-00000**

**NTL # 00-000000**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Charles Hickman, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, appearing *pro se*.

Synopsis:

On April 21, 2000, the Department of Revenue ("Department") issued a Notice of Tax Liability ("NTL") to John Doe and ABC ("taxpayer") for motor fuel use tax. The NTL alleges that the taxpayer was operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license pursuant to section 13a.4 of the Motor Fuel Tax Act (35 ILCS 505/13a.4). The taxpayer timely protested the NTL, and a hearing was held on October 18, 2000. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On March 10, 2000, the taxpayer was issued a citation for operating a truck in Illinois without a valid motor fuel use tax license. (Tr. p. 5).

2. The vehicle that the taxpayer was operating on March 10, 2000, a FLD 120 Freightliner, had International Registration Plan (IRP) plates from Oklahoma. In order to receive those plates, the taxpayer had to complete an application indicating that travel would be done interstate. (Admin. Notice IFTA Registration; Tr. pp. 7, 13).

3. On October 4, 1999, the taxpayer received authority from the Illinois Commerce Commission (ICC) to operate solely in intrastate commerce. Prior to receiving this authority, the taxpayer was operating trucks for an interstate business. The truck in question had the IRP plates from Oklahoma because they are less expensive than Illinois base plates. (Taxpayer Ex. #1; Tr. pp. 10-12)

4. On April 21, 2000, the Department issued NTL number 00-000000-0 to the taxpayer for motor fuel use tax showing a penalty due of \$1000 for failure to have a valid license while operating the vehicle on March 10, 2000. The NTL was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1).

#### CONCLUSIONS OF LAW:

The NTL issued by the Department alleges that the taxpayer was found operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license pursuant to section 13a.4 of the Motor Fuel Tax Act (Act) (35 ILCS 505/1 *et seq.*), which provides in part as follows:

"Except as provided in Section 13a.5 of this Act, no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction." (35 ILCS 505/13a.4).

Section 13a.5 provides an exception for motor carriers holding a single trip permit. (35 ILCS 505/13a.5). A "motor carrier" is defined as any person who operates a commercial motor vehicle in Illinois. (35 ILCS 505/1.17). The Act defines "commercial motor vehicle" as follows:

"[A] motor vehicle used, designed or maintained for the transportation of persons or property and either having 2 axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds \*\*\*, or having 3 or more axles regardless of weight, or that is used in combination, when the weight of the combination exceeds 26,000 pounds \*\*\*, except for motor vehicles operated by this State or the United States, recreational vehicles, school buses, and commercial motor vehicles operated solely within this State for which all motor fuel is purchased within this State. \*\*\*\*" (emphasis added) (35 ILCS 505/1.16).

Section 13a.4 of the Act also provides that the motor fuel use tax license shall be carried in the cab of each vehicle. (35 ILCS 505/13a.4). Section 13a.6 of the Act states that if a commercial motor vehicle is found operating in Illinois without registering and securing a valid motor fuel use tax license, then the person required to obtain a license or permit under Section 13a.4 or 13a.5 of the Act must pay a minimum of \$1,000 as a penalty. (35 ILCS 505/13a.6(b)).

Section 21 of the Act incorporates by reference section 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department's determination of the amount of tax owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 505/21; 120/5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the assessment is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill.App.3d 1036, 1039 (2nd Dist. 1978).

In this case, the Department's *prima facie* case was established when the Department's certified copy of the NTL was admitted into evidence. In response, the taxpayer argues that it was not operating a commercial motor vehicle under the Act because at the time that the citation was issued, the vehicle had been used solely within the State of Illinois and all the motor fuel for the vehicle had been purchased in Illinois.

The citation was issued to the taxpayer because the vehicle had the IRP plates on it. In order to receive the IRP plates, the taxpayer had to file an application with the State of Oklahoma indicating that the taxpayer would travel interstate. Although the taxpayer had the ICC authority

for only intrastate travel, the conflict concerning whether the taxpayer conducts interstate or intrastate business raises a question concerning the taxpayer's credibility. The taxpayer did not present further documentary proof, such as trip tickets, indicating that the truck had been operated solely within the State of Illinois. Without additional documentary evidence, the taxpayer has failed to overcome the Department's *prima facie* case.

It is therefore recommended that the Notice of Tax Liability, No. 00-000000-0, be affirmed.

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Linda Olivero  
Administrative Law Judge

Enter: January 17, 2001